

Title	Child Support: Telephone Appearance in Title IV-D Hearings (adopt Cal. Rules of Court, rule 5.324; approve form FL-679)
Summary	The proposed new rule and optional form would permit telephone appearances in Title IV-D hearings involving local child support agencies.
Source	Family and Juvenile Law Advisory Committee
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Discussion	<p>Proposed rule 5.324 would allow telephone appearances in Title IV-D governmental child support cases. Telephone appearances are already authorized in interstate governmental child support cases by Family Code section 4930(f) and in civil cases by rule 298 of the California Rules of Court. Additionally, numerous courts allow telephone appearances in Title IV-D child support cases under their local rules.</p> <p>A rule allowing appearances by telephone would greatly improve the administration of the high volume of child support cases handled by the Department of Child Support Services (DCSS). DCSS is striving to increase participation by parents, especially noncustodial parents, in the process of establishing child support orders. Participation by both parents is needed for fair, accurate child support orders.</p> <p>The procedures for this rule are distinct from rule 298 of the California Rules of Court that governs civil cases because this rule will allow telephone appearances in contested child support hearings in which witnesses may be called to testify. Therefore, the court will be allowed to approve or reject the application for telephone appearance.</p> <p>Child support commissioners and family law facilitators discussed the concept of a telephone appearance rule at the sixth annual AB 1058 Child Support Training Conference in September 2002. Many characterized a rule permitting telephone appearances as a tool that would improve the process of establishing child support orders. They also identified telephone appearances as an area needing greater uniformity, since wide-ranging procedures and forms are used by counties throughout the state. The chief counsel of DCSS has suggested extending the telephone appearance rule to governmental child support cases because of the high volume of cases, and the need for parental participation, and because it would significantly increase</p>

access to the courts for out-of-county and out-of-state parents.

The proposed telephone appearance rule would permit appearance by telephone, videoconferencing, and other electronic means. Broad guidelines are proposed to enable courts to determine its appropriateness case by case. An out-of-state applicant, an applicant who is 75 miles or more from the courthouse where the hearing is set, and an applicant who will be incarcerated at the time of the hearing are all presumed to have good cause to use this process, subject to the court's discretion to rebut the presumption. Applicants who work or reside less than 75 miles from the courthouse may still request a telephone appearance upon a showing of hardship, subject to the court's discretion.

We ask that commentators particularly review the timelines for requesting, objecting, and ruling on the application.

Proposed form FL-679, *Request for Telephone Appearance and Notice of Nonappearance and Order (Governmental)*, would enable an applicant to file and serve a request for appearance by telephone for specified reasons. It would also provide an order for the court to grant or deny the request, set the time and date for the telephone appearance, and specify the logistics of the call and how its cost will be borne.

The proposed rules and forms are attached at pages 3–9.

Attachments

Rule 5.324 of the California Rules of Court would be adopted, effective January 1, 2004, to read:

Rule 5.324. Telephone appearance

(a) **[Application]** This rule applies to all Title IV-D child support cases as defined in rule 5.300. This rule does not apply to or otherwise limit the operation of Family Code section 4930(f).

(b) **[General provision]** Except in cases governed by Family Code section 4930, a party, an attorney, a witness, or a representative of the child support enforcement agency or governmental agency may request permission of the court to appear by telephone in any Title IV-D child support-related hearing or conference. Telephone appearance, as used in this rule, includes any appearance by telephonic, audiovisual, videoconferencing, digital, or other electronic means. This request must be accompanied by a declaration under penalty of perjury or by a sworn affidavit stating facts that show good cause for a telephone appearance in lieu of a personal appearance. The court may deny the request and require a personal appearance if there are insufficient facts or documentation in support of the submitted application. Courts that lack the technical equipment to implement such a request are exempt from this rule.

(c) **[Presumption of good cause]** Good cause for such application is rebuttably presumed when an applicant:

(1) Resides or works out of state;

(2) Resides or works 75 miles or more from the courthouse where the hearing is set; or

(3) Will be incarcerated at the time set for the hearing.

(d) **[Court discretion]** In circumstances other than specified in (c) above, the court has discretion to grant, in whole or in part, a request to appear by telephone or other electronic means, including but not limited to the following:

(1) The applicant is incarcerated or confined in a prison, jail, or other state institution;

(2) The applicant is disabled, housebound, hospitalized, confined in an institution, or unable to appear personally in court due to a physical or mental hardship;

- (3) The applicant will suffer a significant financial or employment hardship if
- (4) required to appear personally in court;
- (5) All parties have agreed to a telephone appearance;
- (5) Any other circumstances that the court finds to constitute good cause.
- (e) **[Continuance of hearing]** At any time before or during a proceeding or hearing, the court may determine that a personal appearance would materially assist it in deciding the proceeding or hearing and order the matter continued. The court must make this determination case by case.
- (f) **[Denial]** A court that denies, in whole or in part, a request to appear by telephone must state in writing the reason for such denial.
- (g) **[Exceptions]** A personal appearance is required for any of the following:
- (1) Contested trials, contempt hearings, orders of examinations, or any matters in which the party or witness has been subpoenaed in person;
- (2) Settlement conferences, unless the court orders otherwise;
- (3) Case management conferences, unless the court permits telephone appearances at those conferences; or
- (4) Cases in which the identity of the applicant is questionable.
- (h) **[Notice by applicant]** An applicant to appear by telephone at a hearing must submit a *Request for Telephone Appearance* (form FL-679). If the applicant is the moving party or the attorney for the moving party, the *Request* must be submitted with the moving papers. If the applicant is the responding party, the attorney for the responding party, another party, or a witness, the *Request* must be submitted no later than five calendar days after the date of service of the moving papers.
- (i) **[Supporting documentation]** An applicant to appear by telephone must promptly file with the court and promptly serve on the local child support enforcement agency, the other parent, the attorney, and any other party (1) all necessary and supporting pleadings or documents; (2) an *Income and Expense Declaration* (form FL-150) or a *Financial Statement (Simplified)* (form FL-155) his or her three most recent pay stubs, and other proof of income if financial issues or ability to pay is to be decided; and (3) any other supporting

1
2 proof required by local rule of court.
3

4 **(j) [Opposition to telephone appearance]** Any party, attorney for a party, or
5 local child support agency opposing a telephone appearance must submit a
6 statement of opposition within five court days from the submission of the
7 application for telephone appearance.
8

9 **(k) [Court order on the application]** The court must rule on the *Request for*
10 Telephone Appearance by no later than five court days before the hearing date.
11 If the application is not contested and the court has not ruled on the application
12 by that time, the application is deemed granted.
13

14 **(l) [Private vendor]** A court may provide teleconferencing for court appearances
15 by entering into a contract with a private vendor.
16

17 **(m) [Audibility and procedure]** Each court must ensure that the statements of
18 participants are audible to all other participants and that the statements made
19 by a participant are identified as being made by that participant.
20

21 **(n) [Court reporting]** All proceedings involving telephone appearances must be
22 reported to the same extent and in the same manner as if the participants had
23 appeared in person.
24

25 **(o) [Conference call provider]** A court, by local rule, may designate a particular
26 conference call provider that must be used for telephone appearances.
27

28 **(p) [Information on telephone appearances]** Each court must give conspicuous
29 notice to the public of the particular information necessary to request a
30 telephone appearance under this rule.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO. (Optional): FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY FL-679 DRAFT 3 3/25/03
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
<input type="checkbox"/> REQUEST FOR TELEPHONE APPEARANCE NOTICE OF NONAPPEARANCE AND ORDER (GOVERNMENTAL)	CASE NUMBER:

1. I (name): _____, am the
☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent ☐ attorney for: _____
☐ local child support agency ☐ other (specify): _____ in this case.

2. I ask the court to allow me to appear for this hearing from telephone number _____ because:
 - a. ☐ I live/work in _____, outside the state of California.
 - b. ☐ I currently live 75 or more miles from the above courthouse, where the hearing is set.
 - c. ☐ The local child support agency and _____ agree to my telephone appearance.
 - d. ☐ I am incarcerated at _____ jail/prison and will be incarcerated at the time of the requested hearing.
 - e. ☐ I am disabled ☐ housebound ☐ severely ill ☐ confined to (explain):

 - f. ☐ Other hardship, including employment and financial hardship (explain): _____

3. a. I have filed and served moving/responding and supporting documents.
 b. If there are financial issues to be decided I have filed and served on all parties a current *Income and Expense Declaration* (form FL-150) or a *Financial Statement* (form FL-155), along with my three most recent paystubs (if applicable).

4. I agree to be responsible for the costs and arrangements of this telephone appearance if this is required by the court.

5. **I have read the Advisement Regarding Telephone Appearance, and I understand that the terms apply to me.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME)	 (SIGNATURE)
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PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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ORDER

1. ☐ **The request is Granted.** This case is set for hearing by telephone on _____ at _____ a.m./p.m. Pacific time.
- a. Time for service is shortened. Services must be on or before (date): _____
Any responsive declaration must be served on or before (date): _____
- b. The court will call you **collect** between _____ a.m./p.m. and _____ a.m./p.m. Pacific time.
You will need to have copies of all your paperwork available so you can refer to them during the hearing.
- c. You must make all arrangements ☐ and bear the cost _____ for the telephone appearance through the court-approved vendor (*specify*): _____

5. ☐ Other (*specify*): _____

6. ☐ **The request is Denied** for the following reasons:
- a. ☐ Insufficient facts presented
- b. ☐ Insufficient documents presented
- c. ☐ Evidentiary hearing needed
- d. ☐ Personal appearance would materially assert in a determination of the proceedings.
- e. ☐ Other (*specify*): _____

Date: _____

(JUDICIAL OFFICER OF THE SUPERIOR COURT)

PROOF OF SERVICE

I am at least 18 years of age, not a party to this legal action, and a resident of or employed in the county where the mailing took place.

My residence or business address is (*specify*): _____

I served this request and any other forms filed related to this hearing on the local child support agency.

- a. ☐ **Personal delivery.** I personally delivered this request to an employee of the local child support agency as follows:

(1) Address where delivered:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> LCSA	<input type="checkbox"/> Other (<i>specify</i>):
(2) Date of delivery:				
(3) Time of delivery:				

- b. ☐ **Mail.** I deposited this request in the United States mail, in a sealed envelope with postage fully prepaid.

I used first-class mail. The envelope was addressed and mailed as follows:

(1) Name:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> LCSA	<input type="checkbox"/> Other (<i>specify</i>):
(2) Address:				
(3) Date of mailing:				
(4) Place of mailing (<i>city and state</i>):				

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____



(TYPE OR PRINT NAME)

(SIGNATURE)

ADVISEMENT REGARDING TELEPHONE APPEARANCE

- 1 I know that I can personally appear at this hearing, and I give up this right. I agree to be duly sworn by the court clerk, hold up my right hand, and agree under penalty of perjury to tell the truth and nothing but the truth.
- 2 I will provide my driver's license number, social security number, or other information to verify my identity when asked by the court staff to provide this information.
- 3 I agree that the above case may be heard by a court commissioner acting as a temporary judge, and I waive my right to object to this.
- 4 I understand that the court may not have videoconferencing capabilities. I understand and assume the risk that I may not be able to personally see, inspect, or fully comprehend the pleadings, documents, or evidence; the witnesses' facial reactions, demeanor, or hand gestures; or other visual or nonverbal aspects of the hearing.
- 5 If I do not make the proper arrangements, I understand that the matter will proceed without my personal or telephone appearance and the court will decide my case based on the documents I filed for this hearing.
- 6 I understand that the court may decide to terminate the call for good cause, including my not being available at the calendar call, delay, questions about credibility, disruption, noise, misconduct, a communication problem, a technical problem, or other problems.
- 7 I understand that the court may decide to require my personal appearance at any time and continue my hearing to a future date for my personal appearance.
- 8 I assume the risks of cost, time, delay, repeated telephone calls, technical failure, a wrong number, liability, and other claims arising out of this telephone appearance.

I understand that if I need to present documents, present witnesses, cross-examine witnesses, or provide any further information that is not available at the hearing, it is my responsibility to ask the court to continue the hearing. The court may decide to grant or deny my request. I understand that any arguments or supporting proof should be served and filed on time before the hearing so that the court and the other parent have an opportunity to know about my case.

I understand that it is my full responsibility to make all arrangements for the telephone appearance at my own expense.

I agree to be available to receive a collect call from the court on the date and time set for hearing, for a two-hour period, at the telephone number (_____) _____ - _____, which has not been blocked from receiving collect calls. I agree to give up the confidentiality of this telephone number.

If there are financial issues to be decided, I agree that it is my responsibility to timely file with the above court, and timely serve all necessary and appropriate pleadings and documents on the local child support agency (LCSA) and the other parent, including:

Income and Expense Declaration (form FL-150)

Financial Statement (Simplified) (form FL-155)

My three most recent pay stubs or other proof of income

The attached guideline support calculation

Other (*explain and attach any proof*): _____

I agree to contact the LCSA no later than 5 court days prior to the hearing to let the LCSA know which facts. I agree to or do not agree to an effort to resolve or reduce the disputed issues.

Other (*specify*):

Clerk Calendar Cover Sheet

Case Name: _____

Case Number: _____

Hearing Date: _____

Dept. _____ Time: _____

☐ Moving party

☐ Responding party

☐ Local Child Support Agency: _____

☐ Witness/Other: _____

Telephone Appearance Number: _____

☐ Court-Approved Vendor

☐ Caller Number

Caller Identified by:

☐ Driver's License Number *(Do not write the number here.)*

☐ Social Security Number *(Do not write the number here.)*

☐ Other: _____

☐ **MATTER TO BE SUBMITTED Based Upon NOTICE OF NONAPPEARANCE**

Clerk Calendar Cover Sheet